3334.

SUPREME COURT OF THE UNITED STATES.

No. 106.

JOSHUA MAXWELL AND HENRY N. WALKER, PLAINTIFFS IN ERROR,

vs.

ALEXANDER H. NEWBOLD ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

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GIDEON, print.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the judges of the supreme court of the State of Michigan, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea, which is in the said the supreme court of the State of Michigan, before you, between Alexander H. Newbold, Buckminster Wight, George B. Pease, and Frederick Sumner, Frederick Lorens and Henry Sterling, Franklin Moore and George Foote, Franklin Moore, Thomas Gallagher, William Watkins, and William Elmore, plaintiffs, and Joshua Maxwell and Henry N. Walker, defendants, a manifest error hath happened, to the great damage of the said Joshua Maxwell and Henry N. Walker, as by their complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this twenty-first day of September, A. D. eighteen hundred and fifty-five, and of the independence of the United States the seventy-ninth.

JNO. WINDER, *Clerk.* [SEAL.]

The execution of the within writ appears in the return hereto annexed.

WM. KINSLEY, *Clerk.*

(Copy.)—*Bond for costs.*

SUPREME COURT OF THE UNITED STATES.

JOSHUA MAXWELL AND HENRY N. WALKER
vs.
ALEXANDER H. NEWBOLD, Buckminster Wight, George B. Pease, Frederick Sumner, Frederick Lorens, and Henry Sterling, Franklin Moore and George Foote, Franklin Moore, Thomas Gallagher, William Watkins, and William Elmore. } In error.

Know all men by these presents, that we, Joshua Maxwell, of Buffalo, and Halmer H. Emmons and William Gray, of Detroit, are held

and firmly bound unto the above-named Alexander N. Newbold, Buckminster Wight, George B. Pease, Frederick Sumner, Frederick Lorens, and Henry Sterling, Franklin Moore and George Foote, Franklin Moore, Thomas Gallagher, William Watkins, and William Elmore, in the penal sum of two hundred and fifty dollars, to be paid to them, their executors or administrators, to which payment well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents; sealed with our seals, and dated this twenty-seventh day of August, A. D. 1855.

Whereas the above-named Joshua Maxwell and Henry N. Walker have prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above entitled suit by the supreme court of the State of Michigan:

Now, therefore, the condition of this obligation is such, that if the said Joshua Maxwell and Henry N. Walker shall prosecute their said writ of error to effect, and answer all costs if they shall fail to make good their plea, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

J. MAXWELL, [L. S.]
H. H. EMMONS, [L. S.]
WM. GRAY. [L. S.]

In presence of—

I hereby approve of the foregoing bond and the security thereof.

SANFORD M. GREEN,
Presiding judge of the supreme court of the State of Michigan.

Pleas in the supreme court of the State of Michigan, in the case between Joshua Maxwell and Henry N. Walker, plaintiffs in error, and Alexander H. Newbold, Buckminster Wight, George B. Pease and Frederick Sumner, Frederick Lorens and Henry Sterling, Franklin Moore and George Foote, Franklin Moore, Thomas Gallagher, William Watkins and William Elmore, defendants in error.

STATE OF MICHIGAN, *ss:*

Be it remembered, that heretofore, to wit, on the twenty-ninth day of June, A. D. 1855, the said Joshua Maxwell and Henry N. Walker sued out of the said supreme court of the State of Michigan a writ of error, directed to the circuit court of the county of Wayne, and which said writ is in the words and figures following, to wit:

STATE OF MICHIGAN, *ss:*

In the name of the people of the State of Michigan.

[L. S.] To the Circuit Court of the county of Wayne, greeting:

Because in the record and proceedings, and also in the giving of judgment in a plaint which was before you in said county, between

Alexander H. Newbold, Buckminster Wight, George B. Pease and Frederick Sumner, Frederick Lorens and Henry Sterling, Franklin Moore and George Foote, Thomas Gallagher, William Watkins and William Elmore, plaintiffs, and Joshua Maxwell, Benjamin B. Kercheval and Henry N. Walker, defendants, in an action of debt, manifest error hath intervened to the great damage of the said defendants, as by their complaint we are informed; we, being willing that the error, if any there be, should in due manner be corrected and full and speedy justice be done the parties aforesaid in this behalf, do, "in the name of the people of the State of Michigan," command you, that if judgment be thereupon given, then you send to the judge of our supreme court, distinctly and openly, under your seal, the record and proceedings of the plaints aforesaid, with all things concerning the same, and this writ, so that our said supreme court may have them at the said supreme court-room in the city of Adrian, on the first Monday of July next, A. D. one thousand eight hundred and fifty-five, at ten o'clock in the forenoon of that day, that the record and proceedings aforesaid being inspected, our said supreme court may cause to be further done thereupon, for correcting that error, what of right and according to law and custom of the State of Michigan ought to be done.

Witness the honorable Sanford M. Green, presiding judge, at the supreme court-room in the city of Detroit, this twenty-ninth day of June, A. D. 1855.

E. HAWLEY, Jr., *Clerk.*
pr. J. PATCHIN, *Dep. Clerk.*

The return to this writ appears by the schedules hereto annexed.

J. PATCHIN, *Dep. Clerk.*
for E. HAWLEY, Jr., *Clerk.*

Detroit, June 30th, 1855.

And afterwards, to wit, on the fourth day of July, A. D. 1855, the said writ was filed in the said supreme court, together with the return of the said circuit court thereto, and which return is in the words and figures following, to wit:

To the Supreme Court of the State of Michigan:

For return to the annexed writ, the circuit court of the county of Wayne says:

That on the seventeenth day of December, A. D. 1850, the said plaintiffs named in the within writ filed in the office of the said circuit court their declaration in writing against the said defendants named in the annexed writ, and which declaration is in the words and figures following, to wit:

STATE OF MICHIGAN,
Wayne county, ss:

Alexander H. Newbold, Buckminster Wight, George B. Pease, Frederick M. Sumner, Frederick Lorens, and Henry Sterling, Franklin Moore, George Foote, Thomas Gallagher, William Watkins, and

William Elmore, plaintiffs in this suit, by Lothrop & Duffield, their attorneys, complain of Joshua Maxwell, Benjamin B. Kercheval, and Henry N. Walker, defendants in this suit, in an action of debt; and the plaintiffs demand of the defendants the sum of twenty-four thousand dollars, which they owe to and unjustly detain from them; and the plaintiffs file this their declaration as the commencement of suit, pursuant to the provisions of the statute in such case made and provided; for that, whereas the said defendants heretofore, to wit, on the fourth day of November, A. D. eighteen hundred and fifty, at Detroit, to wit, in said county, by their certain writing obligatory, (a copy whereof is hereunto annexed,) the date whereof is the day and year aforesaid, under their respective seals, acknowledged themselves, (that is to say, the said Joshua Maxwell, owner of the steamboat Globe, as principal, and said Henry N. and Benjamin B. as sureties,) to be held and firmly bound unto said plaintiffs, and to each of them, jointly and severally, in the penal sum of twenty-four thousand dollars, for the payment of which well and truly to be made, they and each of them bound themselves, their and each of their heirs, executors, and administrators, jointly and severally, and firmly by said writing obligatory, which said obligatory is subject to a certain condition thereunder written, whereby, after reciting to the effect following, to wit: that whereas, on the application of Alexander H. Newbold, under oath to Elisha Taylor, circuit court commissioner for the county of Wayne, in the State of Michigan, on the first day of November, in the year eighteen hundred and fifty, that he had a claim and demand against the steamboat called the Globe, amounting to the sum of eighteen hundred dollars and upwards; he, the said commissioner, issued his warrant to the sheriff of the county of Wayne, commanding him to attach, seize and safely keep said steamboat, her tackle, apparel and furniture, to answer said complaint; and that, whereas the said steamboat was on the same day seized by the said sheriff, under said warrant; and after further reciting that, whereas the several plaintiffs hereinbefore named, other than the said Alexander H. Newbold, had also, after the seizure of the said boat, delivered to the commissioner sundry accounts, in writing, of demands which they respectively claimed to have against said boat, and to be a lien thereon, which were severally accompanied by affidavits, on which claims amounted, in the aggregate, to ten thousand four hundred and eighty-four dollars and thirteen cents, ($10,484 13,) it is provided and declared in and by said writing obligatory, that the condition of said obligation was such, that if said defendants should pay all such claims and demands as shall have been exhibited to said commissioner, which should be established to have been subsisting liens upon said boat Globe, according to the 122d chapter of the revised statutes of the State of Michigan, at the time of exhibiting the same respectively, then said obligation should be void, otherwise to remain of full force; and the said plaintiffs, in fact, say, that the application made by the said Alexander H. Newbold for the said warrant against said steamboat Globe, and referred to in the condition of said bond,

was in writing and specified the particulars of such demand, and in whose favor the same accrued, and the amount due to him over and above all payments and discounts, as near as might be. And the said plaintiffs further, in fact, say, that the sheriff of said county of Wayne, heretofore, to wit, on the said first day of November and year aforesaid, at said county, and within the jurisdiction of this court, attached and seized said steamboat, according to the command of said warrant, and that he made a return to said commissioner, according to law, of his doings in the premises; that thereupon, the persons herein before named as plaintiffs, other than said Alexander H. Newbold, delivered to said commissioner their respective claims and demands as aforesaid; and that heretofore, to wit, on said fourth day of November and year aforesaid, at said county, the said Joshua Maxwell, claiming to be the owner of said steamboat, applied to said commissioner for an order to discharge said warrant, and having with the other defendants executed and delivered said bond to said commissioner, the said warrant was discharged pursuant to law. And the said plaintiffs availing themselves of the provisions of the statute in such case made and provided, authorizing the prosecution of said bond by any of the attaching creditors separately in respect to the separate claim and demand of said Buckminster Wight, further in fact says, that the said Buckminster Wight, heretofore, to wit, on the said first day of November and year aforesaid, and previous to and at the time of issuing said warrant, had and still has a claim and demand against said steamboat Globe, amounting to a large sum of money, to wit, the sum of fifteen hundred and five dollars and ninety-eight cents, for and on account of materials furnished by him for said boat, at said county, at the special instance and request of one John Robinson, who was then one of the owners of said boat, and managing agent in the building and constructing of the same; and that said debt was contracted by him, and said materials were so furnished for and used in and about the building, fitting, furnishing, and equipping said boat at said county, and that said claim and demand is for lumber, plank, and other materials, which was used as aforesaid, and that the same was furnished from the first day of December, A. D. 1847, to the twenty-first day June, A. D. 1848, both inclusive, and that there was due on said claim, at the time of exhibiting said claim to said commissioner, the sum of fifteen hundred and five $\frac{98}{100}$ dollars, over and above all payments and discounts and all credits to which the defendants are entitled, which sum and the interest thereon is still due and unpaid.

And the said plaintiffs further in fact say and aver, that said claim and demand of said Buckminster Wight was as well on said first day of November, A. D. 1850, being the time of the exhibition thereof to said commissioner as aforesaid, and still is, a subsisting lien on said steamboat.

And said plaintiffs further aver, that said boat was built and constructed at and in said county of Wayne, and was used in navigating the waters of said State of Michigan, from the time she was so built as

aforesaid, to the time of exhibiting said claim and demand to said commissioner as aforesaid, and that she still continues to be so used. And the said plaintiffs here, for the assigning of a breach of the conditions of said writing obligatory, according to the form of the statute in such case made and provided, say, that neither the said defendants, nor any person in their behalf, have paid the said claim and demand so due and owing to the said Buckminster Wight as aforesaid, nor any part thereof; but the same with the interest thereof remains wholly due and unpaid, by reason whereof the said writing obligatory has been forfeited, and according to the said statute an action hath accrued to the plaintiffs to demand and have of and from said defendants the said sum above demanded.

Yet the said defendants, though often requested so to do, have not as yet paid the said sum of money above demanded, nor any part thereof to said plaintiffs or otherwise, according to said writing obligatory; but to pay the same have hitherto wholly refused, and still do refuse, to the damage of said plaintiffs of five thousand dollars, and therefore they bring suit, &c.

By LOTHROP & DUFFIELD,
Plaintiffs' Attorneys.

Copy of Bond herein before referred to.

Know all men by these presents, that we, Joshua Maxwell, owner of the steamboat Globe, as principal, and Henry N. Walker and Benjamin B. Kercheval, as sureties, are held and firmly bound unto Alexander H. Newbold, Buckminster Wight, George B. Pease, and Frederick M. Sumner, Frederick Lorens and Henry Sterling, Franklin Moore and George Foote, Franklin Moore, Thomas Gallagher, William Watkins, and William Elmore, and to each of them, jointly and severally, in the penal sum of twenty-four thousand dollars, for the payment of which, well and truly to be made, we, and each of us, bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents; sealed with our seals, and dated at Detroit, this fourth day of November, in the year one thousand eight hundred and fifty.

Whereas on the application of said Alexander H. Newbold, under oath, to Elisha Taylor, circuit court commissioner for the county of Wayne, in the State of Michigan, on the first day of November, A. D. 1850, that he has claim and demand against the steamboat called the "Globe," amounting to the sum of eighteen hundred dollars and upwards, he, the said commissioner, issued his warrant to the sheriff of the county of Wayne, commanding him to attach, seize, and safely keep, the said steamboat, her tackle, apparel, and furniture, to answer said complaint; and whereas, the said steamboat on the same day was seized by said sheriff under said warrant; and whereas, Buckminster Wight, on the same day delivered to said commissioner an account, in writing, and under oath as provided by statute, setting forth that he had

a claim and demand against said vessel, amounting to the sum of fifteen hundred and five dollars and ninety-eight cents, which was duly filed by said commissioner; and whereas, George B. Pease and Frederick M. Sumner, as partners under the name, style, and firm of George B. Pease & Co., on the same day delivered to said commissioner an account, in writing, and under oath as provided by statute, setting forth that they have a claim and demand against said steamboat Globe, amounting to the sum of four thousand dollars or thereabouts, and which was duly filed by said commissioner; and whereas, Frederick Lorens and Henry Sterling, as partners in trade, under the name and firm of Lorens, Sterling & Co., on the same day delivered to said commissioner an account, in writing, and under oath as provided by statute, setting forth that they have a claim and demand against said steamboat, amounting to the sum of eighteen hundred and thirty-seven dollars and thirty-two cents, and which was duly filed by said commissioner; and whereas, Franklin Moore and George Foote, as partners in trade, under the name and firm of Moore and Foote, on the second day of November, A. D. 1850, delivered to said commissioner an account; in writing, and under oath as provided by the statute, setting forth that they had a claim and demand against the said steamboat, amounting to the sum of three hundred and eighty-two dollars and ninety-four cents, and which was duly filed by said commissioner; and whereas, Franklin Moore, on the second day of November, A. D. 1850, delivered to said commissioner an account, in writing, and under oath as provided by the statute, setting forth that he has a claim and demand against the said steamboat, amounting to the sum of one hundred and fifty-eight dollars and twenty-four cents, and which was duly filed by said commissioner; and whereas, Thomas Gallagher, on the second day of November, A. D. 1850, delivered to said commissioner an account, in writing, and under oath as provided by the statute, setting forth that he has a claim and demand against said steamboat, amounting to the sum of five hundred and eighty dollars and ninety-one cents, which duly filed by said commissioner; and whereas, William Elmore, on the fourth day of November, A. D. 1850, delivered to said commissioner an account, in writing, and under oath as provided by the statute, setting forth that he has a claim and demand against said steamboat, amounting to the sum of twenty-eight dollars and twenty-seven cents, which was duly filed by said commissioner; and whereas, William Watkins, on the fourth day of November, A. D. 1850, delivered to said commissioner an account, in writing, and under oath as provided by the statute, setting forth that he has a claim and demand against said steamboat, amounting to the sum of one hundred and ninety dollars and sixty-seven cents, and which was duly filed by said commissioner:

Now, therefore, the condition of the above obligation is such, that if the said obligors shall pay all such claims and demands as shall have been exhibited to said commissioner, which shall be established to have been subsisting liens upon said steamboat Globe, according to the one hundred and twenty-second chapter of the Revised Statutes of the

State of Michigan, at the time of exhibiting the same respectively, then said obligation shall be void, otherwise to remain in full force.

(Signed) J. MAXWELL, [L. S.]
" B. B. KERCHEVAL, [L. S.]
" HENRY N. WALKER. [L. S.]

In presence of—
ELISHA TAYLOR.

STATE OF MICHIGAN,
Wayne county, ss:

Henry N. Walker and Benjamin B. Kercheval, the sureties in the annexed bond, being duly sworn, on their several oaths say as follows: Benjamin B. Kercheval says, that he is worth the sum of ten thousand dollars, over and above all his debts and liabilities of every kind, and that he has real and personal property within the State of Michigan, subject to execution, worth that amount, over and above all encumbrances; and Henry N. Walker *Walker* says, that he is worth the sum of fourteen thousand dollars, over and above all his debts and liabilities of every kind, and that he has real estate and personal property within the State of Michigan, subject to execution, worth that amount, over and above all encumbrances.

(Signed) B. B. KERCHEVAL,
" H. N. WALKER.

Sworn and subscribed, this 4th day of November, A. D. 1850, before me.

ELISHA TAYLOR,
Circ't court Com'r.

That on the twenty-ninth day of May, A. D. 1852, the defendants filed with the clerk of said court a plea, in words and figures following, to wit:

CIRCUIT COURT FOR THE COUNTY OF WAYNE.

ALEXANDER H. NEWBOLD, Buckminster Wight, George B. Pease and Frederick M. Sumner, Frederick Lorens and Henry Sterling, Franklin Moore and George Foote, Franklin Moore, Thomas Gallagher, William Watkins and William Elmore,
vs.
JOSHUA MAXWELL, BENJAMIN B. KERCHEVAL, and HENRY N. WALKER, defendants.

And the said defendants, by Van Dyke, Emmons & Sheldon, come and demand a trial of the matters and things set forth in the plaintiffs' declaration.

VAN DYKE, EMMON & SHELDON,
Def'ts' Att'ys.

Messrs. LOTHROP & DUFFIELD, *Pl'ffs' Att'ys.*

Take notice that on the trial of this cause the defendants will give in evidence the act of the general assembly of the State of Ohio, entitled "An act providing for the collection of claims against steamboats and other water-crafts, and authorizing proceedings against the same by name," passed February 26, A. D. 1840, at which time the same took effect, the same being contained in Swan's Statutes, chapter 28, page 209. Also an act entitled "An act to amend the act entitled 'An act providing for the collection of claims against steamboats and other water-crafts, and authorizing proceedings against the same by name,'" passed February 26th, 1840, contained in Ohio Laws, vol. 41, page 51. Also an act entitled "An act explanatory of the act entitled an act providing for the collection of claims against steamboats and other water-crafts, and authorizing proceedings against the same by name," passed February 26th, 1840, contained in Ohio Laws, vol. 46, page 78, reference to which laws will be made by consent and stipulation of plaintiffs.

That defendants will claim, as a matter of law of the State of Ohio, steamboats and other water-crafts navigating the waters within or bordering said State were made liable, by said statutes of Ohio, for debts contracted on account thereof, by the master, owner, steward, consignee, or other agents, for materials, supplies, or labor, in the building, repairing, furnishing, or equipping the same, or due for wharfage, &c.; and that under said laws steamboats and other water crafts were liable for the same debts contracted in building and fitting, if the boat or vessel was designed for and used in navigating said waters. That the said steamboat was partly built at Detroit, in the county of Wayne, and State of Michigan, and, when her hull was nearly completed, was taken to Cleaveland, in the State of Ohio, to be finished and obtain her machinery and furniture; and that while she was then in process of being completed, the Cuyahoga Steam Furnace Company of Cleaveland, State of Ohio, furnished materials, supplies, furniture, and labor to said boat, and afterwards, on the same tenth day of September, in the year A. D. 1849, the said company filed their precipe and bill of particulars and affidavits in the superior court of Cleaveland, in a suit brought by them to recover the price and value of said machinery, materials, supplies, furniture, and labor done and furnished as aforesaid by said company to said defendant, the steamboat Globe, before that time, for which the said steamboat was liable by the laws of said State in rem; and the said company proceeded under the acts aforesaid to enforce their said claims; and the said company proceeded to judgment, and a sale of said boat; the particulars of which proceedings will appear more fully on trial by a certified copy of the record of the proceedings in said State of Ohio, in favor of said company, against said steamboat, under the aforesaid laws and statutes, reference to which will be made by consent and stipulation of the said plaintiffs for greater certainty. That the steamboat, while she was so being furnished in the State of Ohio, and after she began to navigate the waters of Ohio, and when she from time stopped during such navigation at the

port of Cleaveland, State of Ohio, obtained from Liakun S. Lyon, from Buckley and Stedman, and Wancaly Stedman, and from Buckley Stedman, Daniel Rhodes, Samuel Crawford and William J. Price, Sylvester Marsh, citizens and residents of said State, and doing business in Cleaveland, in said State, supplies and necessaries respectively within the meaning of the said statute of Ohio; and the 20th and 21st day of September, A. D. 1849, the said creditors of said boat filed their respective claims, and afterwards obtained judgments thereon, and proceeded to a sale of said boat by virtue of an execution thereon, certified copies of which proceedings, judgments, and orders of sale, and sheriff's return thereon, will be produced on the trial of this cause, for which, by consent and stipulation of the plaintiffs, reference will be made. That said boat, while navigating the waters of the said State of Ohio, and adjoining waters, became indebted to her captain, John Watkins, whose residence was at Detroit, Michigan; that on the 24th day of September, 1849, said Watkins filed his claim in said superior court against said boat, for the sum of $3,850 $\frac{40}{100}$, for wages due, for services performed upon said steamboat, for money lent and advanced in the construction, repairing, and fitting up of said steamboat, at the request of the master and owner thereof, also for goods sold and delivered; that the owner of said boat appeared in said cause, and pleaded the general issue to said claim, and gave notice of claim of set-off; that the case went to trial on said issue, and said Watkins recovered a judgment thereon on the 4th day of February, A. D. 1850, for the sum of $1,871 87 damages, and proceeded to a sale of said boat by virtue of execution thereon, a certified copy of which proceedings, judgment, and order of sale thereon, and sheriff's return, will be produced on the trial of this cause, to which, by consent and stipulation of the plaintiffs, reference will be made; that by virtue of the respective orders of sale on said judgment, certified copies of which, by leave of the plaintiffs, will be produced; that said boat Globe was on the 9th day of March, A. D. 1850, after due notice, *was* sold at public auction by the sheriff of the said county of Cuyahoga to E. S. Sterling, for the sum of fourteen thousand dollars, he being the highest and best bidder for the same; and the said Sterling paid the said sum to the said sheriff, whereupon the said sheriff delivered said boat, her tackle, apparel, machinery, &c., to the said Sterling, and made and executed and delivered to the said Sterling a bill of sale of said steamboat, reciting the said judgments and proceedings and orders of sale, and other proceedings against said boat, dated the 22d day of April, 1850, which bill of sale, by consent and stipulation of the plaintiffs, will be produced on the trial of this cause, and reference made thereto.

That the said Sterling being thus possessed of said steamboat, at Cleaveland in the State of Ohio, this defendant, Maxwell, purchased said boat of said Sterling, and paid therefor the sum of seventeen thousand dollars; that the said defendant, Maxwell, received from said Sterling a bill of sale of said steamboat, and was put in possession thereof by said Sterling; and these defendants will further give in evi-

dence, on the trial of this cause, that the said steamboat was at Cleaveland in the State of Ohio when arrested as aforesaid, and remained in the custody of the sheriff of said county until the sale thereof; that the owner of said steamboat appeared and defended the several suits in which judgments were obtained as aforesaid; that the master, owner and crew of said boat were all at Cleaveland and State of Ohio when the said steamboat was seized by the sheriff of said county, by virtue of the warrants issued out of said court, in the suits in which judgments were obtained, and the said steamboat sold, and had actual notice of the seizure of said steamboat and the proceedings in said court in said suits; that other claimants, who were creditors of said steamboat, having demands against said steamboat, and having actual *and having actual* notice of said proceedings against said steamboat, and, among others, each of the plaintiffs in this suit filed their claims in the said superior court of Cleaveland, and arrested said steamboat by warrant, and the said Franklin Moore and George Foote, two of the said plaintiffs, obtained judgment in said court for the identical claim and cause of action, filed by them before the commissioners, for which the said bond in the plaintiffs' declaration mentioned was in part given; that all of said plaintiffs in this action had actual notice of the said proceedings in said court in Ohio; and that the said Buckminster Wight, for whose benefit the suit is brought, on the 4th day of February, A. D. 1850, discontinued his suit, without prejudice, in said court, and withdrew his claim; and the defendants will further claim, that all persons who had any interest in the said steamboat Globe, could, and, in law, had full right to appear in the name of the boat and defend the said proceedings.

VAN DYKE, EMMONS, & SHELDON,
Defts' Att'ys.

That afterwards, to wit, on the 28th day of April, A. D. 1852, at a session of the said circuit court for the county of Wayne, held at the court in the city of Detroit, in said county—present, the honorable Samuel T. Douglass, circuit judge of the third judicial circuit—the plaintiffs having demanded that the said cause be tried by a jury, the following jurors were duly called, elected and sworn to try the issue joined in said cause, viz: who, after hearing the proofs and allegations of the parties, the arguments of counsel and charge of the court, without leaving their seats, say, upon their oaths, that the said defendants are indebted to the said plaintiffs in manner and form as the said plaintiff hath declared against them, and that they assess the damages of the said plaintiffs at the sum of seventeen hundred and forty-nine dollars and seventeen cents; and afterwards, to wit, on the twenty-third day of May, A. D. 1855, on motion of Lothrop & Duffield, attorneys for plaintiff, judgment upon said verdict was entered in said cause, in the words and figures following, to wit: "This cause having been heretofore tried, on the 28th day of April, A. D. 1852, by a jury, and the said jury having found a verdict for the plaintiffs, and on the day aforesaid having assessed the plaintiffs' damages at the sum of one thousand

seven hundred and forty-nine dollars ($1,749 17) and seventeen cents; and since the rendition of said verdict, Benjamin B. Kercheval, one of the original defendants in this cause, having died, and his death having been duly suggested by the plaintiffs and entered in the journal of this court, and the motion for a new trial having been overruled, on the filing of the certified opinion of the supreme court, upon the questions raised in said motion and reserved for the opinion of said supreme court: It is now considered that the said plaintiffs do recover against the said defendants (Joshua Maxwell and Henry N. Walker) the sum of twenty-four thousand dollars, their said debt, together with the costs of this suit to be taxed; and it is further considered and ordered, that the said plaintiffs have execution against the said defendants, Joshua Maxwell and Henry N. Walker, for the sum of two thousand one hundred and twenty-four dollars and eighty-eight cents, being the amount of damages assessed by the jury, and interest from the time when said damages were so assessed, up to this time, and the costs of this suit to be taxed; that on the fifteenth day of May, 1852, the said defendants, by their counsel, filed with the clerk of said court a bill of exceptions, which is hereto annexed and made a part of this return; all of which is respectfully submitted.

J. PATCHIN, *Dep. Clerk*,
for E. HAWLEY, Jr., *Clerk*.

STATE OF MICHIGAN,
Wayne county, ss:

I, Elijah Hawley, jr., clerk of the circuit court for the county of Wayne, do hereby certify that the above and foregoing is a true copy of the record and proceedings had in the cause named therein, as the same appears from the papers on file in my office, and of the whole of such record and proceedings. In witness whereof, I have hereunto subscribed my name and affixed the seal of the circuit court for the county of Wayne, at Detroit, this thirteenth day of June, A. D. 1855.

[L. S.] J. PATCHIN, *Dep. Clerk*.
for E. HAWLEY, Jr., *Clerk*.

STATE OF MICHIGAN.

BUCKMINSTER WIGHT, Alexander H. Newbold, George B. Pease, Frederick M. Sumner, Frederick Lorens, Henry Sterling, Franklin Moore, George Foote, Thomas Gallagher, William Watkins, and William Elmore,
vs.
JOSHUA MAXWELL, Benjamin B. Kercheval, and Henry N. Walker.

State of Michigan, in the circuit court for the county of Wayne.

Afterwards, to wit, at the day and place within contained, that is to say, the twenty-eighth day of April, A. D. eighteen hundred and

fifty-two, before the honorable Samuel T. Douglass, circuit judge, comes as well the said Joshua Maxwell and others, the said defendants, by Wilcox, Sheldon and Gray, their attorneys, and Van Dyke and Emmons, their counsel, as the said Buckminster Wight and others, the said plaintiffs in this suit, by Frazer, Lothrop and Duffield, their counsel; and the jurors of the jury, whereof mention is within made, being called, and likewise come, and being elected, tried and sworn to try the several issues within joined, the said counsel for plaintiffs, on behalf of said plaintiffs, gave in evidence to the jury aforesaid all the matters and things set down in the paper hereto attached, marked Schedule "A," which is to be taken as part thereof; and thereupon the said counsel for the plaintiffs offered in evidence a certain agreement between one John Robinson and said defendant, Joshua Maxwell, a copy whereof is hereto annexed, marked Schedule "B," which is to be taken as a part thereof; to the reception of which the said counsel for the said defendants objected.

Whereupon the court decided that the same was admissible in evidence, to which decision the said counsel for the said defendants then and there excepted; whereupon said agreement was received and given in evidence, on behalf of said plaintiffs, to the jury aforesaid, and the said plaintiffs then rested their case. And thereupon the said counsel for the defendants did, on their behalf, give in evidence to the said jury all the matters and things set down in the notice annexed to their plea in this cause, a copy whereof is hereto annexed marked Schedule C, so far as the same sets forth matters of fact, and not of law, and which is to be taken as a part hereof, and then rested their defence; and it is agreed that on the argument of this cause in the Sup. C't that the records marked from No. 1 to No. 9, be referred to as parts of facts proven therein.

And the said plaintiffs, by their counsel, did then and there request his honor, the judge, to charge the jury aforesaid, as follows:

1st. That if the jury should find, from the evidence adduced in this cause, that the steamboat "Globe," mentioned in the declaration, has been constructed and built in this State, and was used in navigating the waters thereof, and that the debt, claim or demand, for which she was attached by the plaintiff has been contracted in this State by the owners, joint owner, or agent thereof, on account of supplies furnished by said plaintiff for the use of said boat, or on account of work done, or materials furnished by said plaintiffs in or about the building, fitting, furnishing, or equipping of said boat in said State; that then said plaintiff acquired and had a lien on said boat for said debt, claim or demand, under and by virtue of the law of this State.

2d. That if the jury should be of the opinion, from said evidence, that said claim or demand of said plaintiff constituted a lien on said boat, which had been acquired as aforesaid, and that the contracting parties were then citizens of this State, then that such lien had not been displaced or affected by the legal proceedings, resorted to in the court of Ohio, exemplifications of which were introduced in evidence by the defendants; that if any title was acquired under the same, or the laws

of Ohio, such title is subordinate to the lien acquired by the plaintiff in this State, by virtue of the laws thereof; that such proceedings do not constitute a valid defence to this action, and that said boat, on coming within the jurisdiction of this court, was subject to be attached for said claim. To each of which said charges, and the opinions and decisions therein, the said defendants then and there excepted, and caused his honor, the judge, to make a note of said exceptions.

And thereupon said defendants, by their said counsel, requested his honor the judge to charge the said jury as follows: 1st. That the facts contained in the notice of defendants, and which are admitted as true by the plaintiffs, constitute in law a defence to the plaintiffs' action. 2d. That the sale under the laws of Ohio, if fair and bona fide, constitutes a defence to a purchaser under such laws to a prosecution by a creditor under the laws of this State, such as the plaintiffs in this case have shown themselves to be. 3d. That defendant Maxwell's title is good against the lien or claim of the plaintiff Wight in this cause, even if that of Sterling was not. 4th. That the filing of the plaintiff's claim in the Ohio court precludes him from raising the objection that such court had no jurisdiction of his rights so as to divest his lien by a sale in that State. 5th. That a lien under the statutes of this State, though valid in its inception, cannot be enforced against a purchaser in good faith under a sale under the laws of the State of Ohio, so given in evidence.

And his honor the judge then and there refused, in reference to each one said five charges, to charge the same; to which refusal and decision in reference to each separate charge, so as aforesaid requested by the said defendants, the said defendants, by their said counsel, then and objected and excepted, and caused his honor the judge to make a note of their said objections.

And because none of the said exceptions, so offered and made to the opinions and decisions of the circuit judge, do not appear upon the record of said trial, therefore, on the prayer of the said defendants by their said counsel, the said circuit judge hath to this bill of exceptions set his signature and his seal, according to the statute in that case made, this fifteenth day of May, A. D. 1852.

SAM'L T. DOUGLASS, [L. S.]
Circuit Judge.

Schedule "A."

STATE OF MICHIGAN.

In the Circuit Court for the county of Wayne.—Case on separate claim of Buckminster Wight.

BUCKMINSTER WIGHT, ALEXANDER H. NEWBOLD, et al.,
vs.
JOSHUA MAXWELL et al.

WAYNE COUNTY, *ss:*

At the trial of this claim the defendant admits that the steamboat Globe, in the declaration in this case mentioned, is and was, when the

cause of action accrued, a steamboat navigating the waters of the State of Michigan; that she was then owned by John Robinson, late deceased, who was then a citizen of Detroit, Wayne county, Michigan; that the claim sued in this action is for materials furnished by said Buckminster Wight, at the time mentioned in said declaration, at the instance and request of said Robinson, for the building, fitting, and furnishing said Globe; that said Globe was, when said materials were furnished, at Trenton, in said Wayne county, where said boat was built; that said materials were suitable for the building of said boat, and the prices charged for the same are fair and reasonable, as by the bill of said Wight appears, and were furnished at the times therein mentioned, after the first day of March, A. D. 1847, and during the period in said declaration mentioned, to wit, between the said first day of March and the 22d day of June, 1848; and that said Wight then was and still is a citizen of the State of Michigan, residing at said Detroit; that said boat was within said Wayne county when the application of said Alexander H. Newbold for a warrant for the seizure of said Globe, in the declaration in this cause mentioned, was made and verified; that the claim of said Wight in the declaration set forth is the same which was exhibited before Elisha Taylor, esq., the circuit court commissioner, who issued the warrant for the seizure of said Globe, on the application of said Newbold aforesaid, and on which said boat was seized; that said Taylor was, at the time of making said application, the issuing warrants, of making said seizure, and the giving the bond in the declaration mentioned, a circuit court commissioner for the county of Wayne, and that the bond declared on is the bond of the defendants; that said application made by said Newbold was in writing, verified by oath, and specified the particulars of his demand, in whose favor the same accrued, and the amount due to him, over and above all payments and discounts, as near as might be; that said commissioner thereupon issued his warrant in due form, for the seizure of said boat, to the sheriff of Wayne county; that on the first day of November, A. D. 1850, said sheriff duly seized said boat, under said warrant, within the jurisdiction of this court and of said commissioner, and made due return of the same to said commissioner; that afterwards, and before the execution of said bond, said Wight delivered to said commissioner an account in writing of his demand against said boat, verifying by oath, specifying the particulars of his said demand, in whose favor the same accrued, and the amount due him, over and above all payments and discounts. And for the purpose of this trial, it is also admitted that E. T. Sterling and Joshua Maxwell had notice of the existence of said Wight's claim, before Sterling bought said Globe at the judicial sale in Ohio. The agreement between Joshua Maxwell and John Robinson, (a copy of which is hereto attached,) dated Cleaveland, Ohio, April 20th, 1850, touching said steamboat Globe, is admitted by the defendants in evidence, subject to objection for its irrelevancy. And the defendants further admit that the said Globe was taken to Cleaveland, after the materials mentioned in the plaintiffs' demand had been delivered.

Detroit, April , 1852.

Schedule B.

Memorandum of the agreement executed between Joshua Maxwell, of Buffalo, and John Robinson, of Cleaveland, Ohio, on the 20th day of April, 1850.

Whereas the said Joshua Maxwell has purchased the steamboat called the Globe, together with her tackle, apparel, and furniture, and now holds title thereto, for the sum of fifteen thousand five hundred and two dollars and twelve cents, paid to E. T. Sterling, of Cleaveland, and the sum of fourteen hundred and eighty-eight dollars and sixty cents, paid to John Owen, of Detroit; and whereas the said Maxwell, on his own account, holds a good and valid mortgage, bearing date the 14th day of September, 1847, on the said steamboat, to secure a debt already due in the sum of seven thousand five hundred and fifty dollars, on which there is now due, of principal and interest, the sum of about $8,500 00; and whereas there are numerous claims by different parties against said steamboat, which are cut off by the title purchased by the said Maxwell, but which may become to be litigated hereafter, and which it is intended shall be defended or compromised; and whereas it is further intended to run the said steamboat on the lake, and to protect and defend the said title, and to pay the moneys aforesaid by and between the said Maxwell and Robinson: Now, therefore, for these purposes and others, the said parties do enter into the following stipulations mutually between each other: the said Maxwell agrees that he will pay and advance all moneys needed from time to time to protect the title of the said Maxwell aforesaid, and to prevent the sale of said boat, and in case of the seizure or detention for any existing liability at his election, either to procure bail for said boat or to advance such sum of money as may be necessary for the compromise or payment of such liability, (provided said Robinson requests it;) and he also agrees to advance such moneys as shall be necessary to compromise any claim, provided the said parties agree so to do. The said Maxwell further agrees to keep the said steamboat insured in some responsible company or companies, in the sum of $20,000, against loss by fire and marine risks, and $20,000 against loss by fire only.

It is understood and agreed that the said Robinson, and he the said Robinson agrees so to do, shall take the charge and possession of said steamboat as master, for and during the space of three years from the date of this instrument, doing and performing every thing in a skilful and faithful manner that appertains to a master of a steamboat, and to take the entire and exclusive charge of running and sailing the said steamboat, at the annual salary or charge of eight hundred dollars per year.

But it is hereby mutually agreed, that for the exclusive management of the finances in the employment of the said steamboat, in sailing and running her, that the said Maxwell is to have the right of choosing and putting on board a good, honest, and competent clerk, for whose acts the said Maxwell shall be accountable, whose duties shall be to re-

ceive and disburse all moneys to be received and disbursed in navigating and managing and repairing the said steamboat, and to keep vouchers thereof, and the usual books of account, appertaining to the whole business of the said steamboat, and which vouchers and books of account shall be equally open to the inspection of both the said Maxwell and Robinson; and it shall also be the duty of the said clerk to render each month an account of the receipts and disbursements of said steamboat to both the said Maxwell and Robinson, and each trip to pay over to the said Maxwell the surplus moneys, over and above the expenses and disbursements of running the said steamboat, taking a receipt therefor, and delivering it to the said Robinson. The said Maxwell is to pay the said clerk, and to be liable for his wages; and the said Robinson is to be paid his said salary by the said clerk, out of the earnings of the said steamboat, monthly, as a part of the disbursements, as well as the wages of all the men on board, except the said clerk. It is mutually agreed that the said Maxwell is to act as the agent of the boat at Buffalo, and in consideration of his employing the aforesaid clerk, and of his own services, is to be paid as one of the expenses of said steamboat the sum of two thousand dollars annually, in monthly instalments. The said Maxwell does also agree that he will, upon being paid by the earnings of the boat as aforesaid, or any other mode, the said sum of $15,457 12, and $1,420, and his said debt secured by mortgage as aforesaid, together with all the interest that shall have accrued thereon, and also every sum of money he may have been compelled to pay to protect the title of the said steamboat in the manner above stated, together with all charges, expenses, and liabilities paid or incurred in such amount, and the interest thereon, and also every sum to which, with the interest thereon, he is entitled to by the stipulations in this agreement, and also all the moneys or accounts he may have against the said boat, arising out of the insuring and running and owning of the said steamboat, that may remain unpaid to him at the end of the said term of three years, or at any before the end thereof, he will sell and convey to him, the said Robinson, or to his assigns, all his right, title, and interest in the said steamboat, her tackle, apparel, and furniture, and everything belonging thereto. In case of loss of the said steamboat, the said Maxwell agrees to pay all the insurance moneys he may receive, over and above what moneys he shall be entitled to retain by either of the stipulations aforesaid, over to the said Robinson or his assigns. In case, at the end of the term of three years, the claims of the said Maxwell remains unpaid, then he may sell the said steamboat at public auction, on a notice of seventy days, in a newspaper at Buffalo; and out of the proceeds, he may retain enough to satisfy his moneys then due him, and the expenses of the said sale, paying over to the said Robinson the surplus moneys, if any there should be. It is further agreed, that, if any difficulty or disputes occur between the above parties, touching the stipulations of this agreement, or what either party ought to in the premises; George W. Rogers, of Buffalo, and E. T. Sterling, of Cleaveland, shall decide any such matters

between them, and such decision shall be a final award thereof, and the damages, if either party do not abide by and perform such decision, are stipulated at $2,000, to be a sum against the party not so abiding and performing in favor of the others, and, to be allowed him as the stipulation in this agreement. It is further agreed, by and between the parties hereto, that said Robinson has the right to sell, or otherwise dispose of his interest in said boat, and to all benefits arising to him from this agreement, and that said assigns, or said Robinson's legal representatives, shall enjoy all benefits of this agreement, by virtue of any such sale or transfer.

In witness whereof, the said parties have hereunto set their hands and seals, this 20th day of April, A. D. 1850.

(Signed) JOHN ROBINSON,
J. MAXWELL.

And afterwards, the said plaintiffs in error filed in the said supreme court their assignment of errors, in the words and figures following, to wit:

In the supreme court of the State of Michigan, July term, A. D. 1855.

JOSHUA MAXWELL and HENRY N. WALKER, pltffs. in error,
vs.
BUCKMINSTER WIGHT, ALEXANDER H. NEWBOLD, GEORGE B. PEASE et al., defts. in error.

Afterwards, to wit, on this third day of July, A. D. 1855, in this same term, before the justices of the supreme court of the State of Michigan, come the said plaintiffs in error, by H. H. Emmons and Wilcox & Gray, their attorneys, and say, that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error in this:

1st. The court erred in charging the jury, as requested by the plaintiffs below, and upon the points and to the effect stated more fully in the bill of exceptions filed herein, and to which reference is hereby had.

2nd. The court erred in refusing to charge the jury as requested by the defendants below, upon the points and to the effect stated in the bill of exceptions filed herein, and to which, for fuller particularity, reference is hereby had.

3rd. The charge of the court, the verdict of the jury, and the judgment below, are each and against and in conflict with the Constitution and laws of the United States, and therefore erroneous.

4th. By the record aforesaid, it appears that the judgment was given against the plaintiffs in error, whereas, by the law of the land, the said judgment should have been in favor of the plaintiffs in error, and against the defendants in error.

And the said plaintiffs in error pray that the judgment aforesaid, for the errors aforesaid, and other errors in the record and proceedings

aforesaid appearing, may be reversed, annulled, and altogether held for nothing, and that they may be restored to all things which they have lost by occasion of the said judgment, &c.

H. H. EMMONS, AND WILCOX & GRAY,
Att'ys for Plt'ffs in error.

And afterwards, the said defendants in error filed their joinder in error, in the words and figures following, to wit:

SUPREME COURT OF THE STATE OF MICHIGAN.

BUCKMINSTER WIGHT, ALEXANDER H. NEWBOLD, GEORGE B. PEASE et al., defts. in error, ads.
JOSHUA MAXWELL and HENRY N. WALKER, plffs. in error.

And hereupon, afterwards, to wit, on the third day of July, 1855, the said defendants in error, by Lothrop & Duffield their attorneys, freely come here into court, and say, that there is no error, either in the record or proceedings aforesaid, or in giving the judgment aforesaid; and they pray that the said supreme court now here may proceed to examine as well the record and proceedings aforesaid, as the matters aforesaid assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c.

LOTHROP & DUFFIELD,
Att'ys for Def'ts in error.

And now, to wit, on the fourth day of July, A. D. 1855, and of the July term of the supreme court aforesaid of the State of Michigan:

JOSHUA MAXWELL and HENRY N. WALKER, plffs. in error,
vs.
BUCKMINSTER WIGHT, Alexander H. Newbold, George B. Pease, Frederick M. Sumner, Frederick Lorenz, Henry Sterling, Franklin Moore, George Foote, Thomas Gallagher, William Watkins, and William Elmore, defts. in error.

This cause now coming on to be heard before the supreme court of the State of Michigan, before the justices thereof, now come the said parties aforesaid, by Willcox & Gray, of counsel for the plaintiffs in error, and Lothrop & Duffield, of counsel for the defendants in error, and the said cause is submitted without argument; whereupon, as well the record and proceedings aforesaid, and the judgment given in form aforesaid, as the matters aforesaid, by the said Joshua Maxwell and Henry N. Walker, above for errors assigned being seen, and by the said supreme court, before the said justices thereof, now here fully understood, and mature deliberation being thereupon had, it appears to the said court, before its said justices now here, that there is no error, either in the record and proceedings aforesaid, or in the giving the

judgment aforesaid; therefore, it is considered that the judgment aforesaid, in form aforesaid, be in all things affirmed, and stand in full force and effect; the several matters above for errors assigned, in anywise notwithstanding. And it is further considered that the said Buckminster Wight do recover against the said Joshua Maxwell, as well his debts aforesaid, and the costs aforesaid of the said circuit court for the county of Wayne to be taxed, as also the costs of this court to be taxed; and that they have execution for their said damages as assessed, with the said costs to be taxed.

Judgment signed, July 4th, 1855.

In Supreme Court of the State of Michigan.

BUCKMINSTER WIGHT et al. ads. JOSHUA MAXWELL and HENRY N. WALKER. } Error from Wayne circuit court.

The questions presented with writ of error in this cause, having been heretofore determined by this court, on questions reserved against the plaintiffs in error, it is stipulated and agreed that this cause be submitted, without argument, to this court, at the July term of 1855, at Adrian; and further, it is agreed, that an order, separate from the order of affirmance of the judgment below, (if there be such affirmance,) be entered, directing that the files in this cause be transmitted to the clerk of the supreme court at Detroit, to be filed in his office.

H. H. EMMONS, & WILCOX & GRAY,
Att'ys for Pl'tffs in error.
LOTHROP & DUFFIELD,
Att'ys for Def'dts in error.

The Supreme Court of the State of Michigan.

BUCKMINSTER WIGHT, ALEXANDER H. NEWBOLD, GEORGE B. PEASE, et al., defendants in error, ads. JOSHUA MAXWELL and HENRY N. WALKER, plaintiffs in error.

I, William Kinsley, clerk of the said supreme court of the State of Michigan, do hereby certify the above and foregoing to be a true copy of the original record of judgment, made and entered in said court in the above entitled cause, and of the whole of said record, the same having been by me compared with the said original.

In witness whereof, I have hereto subscribed my name and affixed the seal of the said court, at Adrian, this twenty-fifth day of September, A. D. eighteen hundred and fifty-five.

[SEAL.] WILLIAM KINSLEY, *Clerk*.

Citation.

UNITED STATES OF AMERICA, *ss:*

To Alexander H. Newbold, Buckminster Wight, George B. Pease, Frederick Sumner, Frederick Lorens, and Henry Sterling, Franklin Moore and George Foote, Franklin Moore, Thomas Gallagher, William Watkins, and William Elmore, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Michigan, (at Adrian in said State,) wherein Joshua Maxwell and Henry N. Walker are plaintiffs, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Sanford M. Green, presiding justice of the said supreme court of the State of Michigan, this twenty-ninth day of August, A. D. 1855.

SANFORD M. GREEN,
Presiding Justice of the Supreme Court of the State of Michigan.

We hereby acknowledge service of the above citation, in behalf of the said defendants in error.

LOTHROP & DUFFIELD,
Att'ys for said def'ts.

Sept. 29th, 1855.

Assignment of errors.

In the Supreme Court of the United States—on writ of error from the supreme court of the State of Michigan.

JOSHUA MAXWELL & HEN. N. WALKER, plaintiffs in error,
vs.
ALEXANDER H. NEWBOLD, Buckminster Wight, Frederick Sumner, Frederick Lorens, and Henry Sterling, Franklin Moore, Thomas Gallagher, William Watkins, and William Elmore, defendants in error.

Afterwards, to wit, on the fifth day of October, A. D. 1855, before the justices of the Supreme Court of the United States, come the said plaintiffs in error, by Emmons and Gray, their attorneys, and say, that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error in this—

1st. By the record aforesaid it appears that judgment was given against